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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

1 MELANIE ESPIRITU, In Pro Per  
2 JESUS ESPIRITU, In Pro Per  
3 987 Saint Germain Road,  
4 Chula Vista, CA 91913  
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7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 MELANIE ESPIRITU and JESUS ESPIRITU,  
12 wife and husband, as joint tenants,

13 Plaintiffs,

14 v.

15 AMERICA'S WHOLESALE LENDER, a  
16 Business Entity, form unknown; FINANCIAL  
17 TITLE COMPANY, a Business Entity, form  
18 unknown; MORTGAGE ELECTRONIC  
19 REGISTRATION SYSTEMS, INC. a Business  
Entity, form unknown; and DOES 1-20 inclusive,

20 Defendants.  
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24  
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Case No. 10 CV 2277

JLS BGS

COMPLAINT FOR:

1. DECLARATORY RELIEF;
2. INJUNCTIVE RELIEF;
3. DETERMINE NATURE, EXTENT AND VALIDITY OF LIEN;
4. CONTRACTUAL BREACH OF GOOD FAITH FAIR DEALING;
5. VIOLATIONS OF TILA;
6. VIOLATIONS OF RESPA;
7. VIOLATION OF CALIFORNIA CIVIL CODE § 2932.5
8. RECISSION;
9. FRAUD;
- 10 UNFAIR AND DECEPTIVE ACTS AND PRACTICES (UDAP);
11. BREACH OF FIDUCIARY DUTY;
12. UNCONSCIONABILITY;
13. PREDATORY LENDING; CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200;
14. QUIET TITLE

Jury Trial Demanded

OK

1 **INTRODUCTION**

2 COMES NOW the Plaintiffs MELANIE ESPIRITU and JESUS ESPIRITU (hereinafter  
3 referred to as "Plaintiff" or "Borrower"), alleges as follows:  
4

5 **PARTIES**

6 1. At all times relevant herein, Plaintiff was over the age of eighteen and is and was a  
7 resident of CHULA VISTA, County of SAN DIEGO, State of California.

8 2. The real estate that is the subject of this litigation is 987 SAINT GERMAIN ROAD,  
9 CHULA VISTA, CA 91913 (hereinafter referred to as "Subject Property").  
10

11 3. Plaintiff purportedly entered into a loan repayment and security agreement on or  
12 about, SEPTEMBER 1, 2005 with Defendant ORIGINAL MORTGAGE LENDER, (hereinafter  
13 referred to as "AMERICA'S WHOLESALE LENDER"), which required Plaintiff to repay a loan of  
14 \$660,250 to AMERICA'S WHOLESALE LENDER.  
15

16 4. Plaintiff is informed and therefore believes that Defendant AMERICA'S  
17 WHOLESALE LENDER, a Business Entity, form unknown, is a corporation, authorized to do  
18 business in the State of California. AMERICA'S WHOLESALE LENDER was the original  
19 mortgage lender with an unknown business addresses.

20 5. Plaintiff is informed and therefore believes that Defendant ORIGINAL MORTGAGE  
21 BROKER (hereinafter referred to as "UNKNOWN MORTGAGE BROKER"), a Business Entity,  
22 form unknown, is a corporation, authorized to do business in the State of California. UNKNOWN  
23 MORTGAGE BROKER was the original mortgage broker with an unknown business address.  
24

25 6. Plaintiff is informed and therefore believes that Defendant ORIGINAL ESCROW /  
26 TITLE COMPANY, (hereinafter referred to as "FINANCIAL TITLE COMPANY"), a Business  
27  
28

1 Entity, form unknown, is a corporation, authorized to do business in the State of California.  
2 FINANCIAL TITLE COMPANY is the original Escrow/Title Company for the loan, with an  
3 unknown business address.

4  
5 7. Plaintiff is informed and therefore believes that MORTGAGE ELECTRONIC  
6 REGISTRATION SYSTEMS (hereinafter referred to as "MERS"), a Business Entity, form  
7 unknown, is a corporation, authorized to do business in the State of California. MERS is the current  
8 mortgage nominee/beneficiary and has a business address of P.O. Box 2026. Flint, MI 48501-2026.

9  
10 8. The Defendants (each of them named in the above-referenced paragraphs, shall  
11 collectively be referred to as "DEFENDANTS") named herein "all persons unknown",  
12 claiming any legal or equitable right, title estate, lien or interest in the property described  
13 in this Complaint adverse to Plaintiff's title thereto and as DOES I through 20  
14 (hereinafter referred to as "UNKNOWN DEFENDANTS") are unknown to Plaintiff.  
15 These unknown Defendants and each of them claim some right, title, estate, lien or  
16 interest in the Subject Property hereinafter described adverse to Plaintiff's title and their  
17 claims and each of them constitute a cloud on Plaintiff's title to the Subject Property.  
18 Plaintiff is informed and therefore believes, and on that basis alleges that each fictitiously  
19 named herein as a DOE is responsible for the events happening hereinafter alleged.  
20 Plaintiff will seek leave of the Court to amend this Complaint to allege the true names  
21 and capacities of said fictitiously named Defendant's when ascertained.

22  
23 9. Plaintiff is informed and therefore believes and on that basis alleges that at all times  
24 mentioned herein, the UNKNOWN DEFENDANTS are individuals and/or business entities whose  
25 forms are unknown and were agents, principals, employees, employers and co-conspirators of each  
26 and every other named or unnamed Defendant in this Complaint. Plaintiff is informed and therefore  
27  
28

1 believes and on that basis alleges that each of said Defendants is and at all relevant times herein, was  
2 acting within the scope and consent of the remaining named and unnamed Defendants.

3 10. Whenever in this Complaint an act or omission of a corporation or business entity is  
4 alleged, the allegation shall be deemed to mean and include an allegation that the corporation or  
5 business entity acted or omitted to act through its authorized officers, directors, agents, servants,  
6 and/or employees, acting within the course and scope of their duties, that the act or omission was  
7 authorized by corporate managerial officers or directors, and that the act or omission was ratified by  
8 the officers and directors of the corporation or business entity.  
9

10 11. During the processing and sale of this loan to Plaintiff, AMERICA'S WHOLESALE  
11 LENDER and UNKNOWN MORTGAGE BROKER were aware that "payment shock" would occur  
12 because of the manner in which Defendants qualified Plaintiff for the current loan product. The  
13 underwriting process and failure to properly verify Plaintiff's assets, income, debt and risks created a  
14 circumstance for Plaintiff wherein foreclosure would be inevitable and Defendants were aware of  
15 this fact. AMERICA'S WHOLESALE LENDER also increased a Yield Spread Premium to  
16 UNKNOWN MORTGAGE BROKER. AMERICA'S WHOLESALE LENDER then has the  
17 opportunity to recoup the premium fees paid to UNKNOWN MORTGAGE BROKER upon  
18 foreclosure. As a result of the lack of ownership in the Subject Property, coupled with the excessive  
19 fees and unfair structure, Plaintiff suffered tremendous "payment shock" and was required to  
20 investigate the actions of the Defendants.  
21  
22

23 12. As a result of their mortgage activities, Defendants and each of them are and were  
24 subject to and must comply with the Federal Truth In Lending Act (hereinafter referred to as  
25 "TILA") [15 U.S.C. §1601-1666j]; [24 C.F.R. § 3500.1-3500.17]; the Real Estate Settlement  
26 Procedures Act (hereinafter referred to as "RESPA") [12 U.S.C. § 2601 et.seq.]; California Business  
27  
28

1 and Professions Code [§ 17200; Federal Trade Commission § 5]; 24 Code of Federal Regulations §  
2 3500.10; § 10241.3; Unfair and Deceptive Business Practices and Acts [UDAP Statutes]; and  
3 California Civil Codes §1918-21, § 1916.7 – multiple sections; and Code of Federal Regulations §  
4 226.23(3), among others.

### 5 6 JURISDICTION

7 13. Jurisdiction of this court is involved due to the presentation of a Federal question pursuant to  
8 the Federal statutes outlined above and 28 U.S.C. §§ 1331 and 1337.

9 14. This Court has supplemental jurisdiction over Plaintiff's State law claims pursuant to 28  
10 U.S.C. § 1367.

11 15. This Court has jurisdiction to render the declaratory judgment Plaintiff seeks pursuant to  
12 28 U.S.C. § 2201.

13 16. Venue is proper within this district pursuant to 28 U.S.C. § 1391(b), because: (i) the real  
14 property exists within said district, (ii) the Defendants, and each of them, has/have or is/are doing  
15 business within the district; and (iii) further, the *pendente* causes of action pursuant to California law  
16 concerns real property within the County of SAN DIEGO within this district.

### 17 FACTUAL ALLEGATIONS

18 17. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
19 fully set forth herein.

20 18. For years, mortgage brokers and lenders have been selling loan products that they  
21 knew or should have known would never be able to be repaid by the borrower and would prevent  
22 borrowers from ever actually owning the home. Instead, borrowers were offered interest-only,  
23 negative amortization, and/or other subprime loan products that amounted to no more than a short  
24 term lease until the payments became so unaffordable that the borrowers are now faced with either  
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26  
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1 bankruptcy or foreclosure. Further, lenders frequently qualify borrowers for loans that they cannot  
2 and will not be able to afford. This is done to lead to a maximization of profits for the lenders  
3 without cause or concern for borrower's financial condition, their credit and their livelihoods or  
4 homes. The housing bubble of the past decade was created by predatory lending practices, such as  
5 charging excessive fees, incorporating payment penalties, negative amortization payments, or other  
6 abusive terms in the agreements, providing kickbacks to brokers, flipping loans, using balloon  
7 payments to conceal the true burden of the financing, requiring unnecessary insurance and other  
8 products, including mandatory arbitration clauses, steering borrowers to subprime loans when they  
9 qualify for conventional loans, and using bait and switch tactics. All were rampant within the  
10 industry without oversight or good judgment and found to be inconsistent with important national  
11 objectives, including the goals of fair access to credit, community development, and stable  
12 homeownership by the broadest spectrum of America. Rather than offering a loan product that was  
13 viable and long-term for the borrower and lender, brokers and lenders greedily sold whatever they  
14 could get away with, arguably the primary catalyst for what is now this country's worst economic  
15 crisis since the Great Depression.  
16  
17  
18

19 19. The loan product sold to Plaintiff in this case was exactly the kind of loan that has  
20 contributed to our national problem. The Defendants were aware of this trend, and possessed the  
21 foresight to advise Plaintiff of this risk. They intentionally concealed the negative implications of  
22 the loan they were offering, and as a result, Plaintiff faces the potential of losing their home to the  
23 very entity and entities that placed them in this position.  
24

25 20. On or about SEPTEMBER 1, 2005 (hereinafter referred to as "Closing Date") Plaintiff  
26 allegedly entered into a consumer credit transaction with AMERICA'S WHOLESALE LENDER by  
27 obtaining a mortgage loan of \$660,250 secured by Plaintiff's principal residence, (Subject Property).  
28

1 This note was allegedly secured by a First Trust Deed on the Property in favor of AMERICA'S  
2 WHOLESALE LENDER.

3         21. Liability continues to exist on the part of AMERICA'S WHOLESALE LENDER  
4 even if no longer in possession of the note due to sale, transfer or assign because under the Federal  
5 Truth In Lending Act § 1640, if any violation by AMERICA'S WHOLESALE LENDER that  
6 occurred (before its sale to AMERICA'S WHOLESALE LENDER), were apparent on the face of the  
7 disclosures, then assignee liability exists. For example, in Cazares v Pacific Shore Funding, C.D.  
8 Cal. 1/3/2006, an assignee that actively participated in original lender's act and dictated loan terms  
9 may be liable under UDAP statutes.  
10

11         22. Each subsequent Defendant who has participated in, been assigned or been transferred  
12 Rights, or holds a position or interest under this loan agreement, including AMERICA'S  
13 WHOLESALE LENDER, UNKNOWN MORTGAGE BROKER, FINANCIAL TITLE  
14 COMPANY, MERS and UNKNOWN DEFENDANTS (hereinafter referred to collectively as  
15 "Defendants") failed to perform their due diligence in investigating the legal requirements that this  
16 loan should have been processed within. As a result, Defendants now hold an interest in a loan that  
17 was improperly handled from its inception.  
18

19         23. The terms of the transaction with AMERICA'S WHOLESALE LENDER are not  
20 clear or conspicuous, nor consistent, and are illegal, and include, for example, extremely high ratios  
21 with respect to Plaintiff's Income and Liabilities. The loan was 100% of the value. The Plaintiff  
22 therefore had no value in the home. The Plaintiff would not be able to refinance out of the high rate,  
23 due to lack of equity. Plaintiff was given a loan that was an inappropriate loan. The loan was more  
24 expensive in terms of fees, charges and or interest rates than alternative financing for which Plaintiff  
25 could have qualified. The terms of the loan given to Plaintiff are such that they can never  
26  
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28

1 realistically repay the loan.

2       24. These acts of deception violate several statutes and in essence create an illegal loan.  
3 Further, this loan was underwritten without proper due diligence by AMERICA'S WHOLESALE  
4 LENDER as evidenced by their failure to verify borrower's income utilizing signed IRS Income Tax  
5 Disclosure Form 4506T which would have provided past borrower tax returns nor verify income or  
6 employment.  
7

8       25. In addition, and unbeknownst to Plaintiff, AMERICA'S WHOLESALE LENDER  
9 illegally, deceptively and/or otherwise unjustly, qualified Plaintiff for a loan which AMERICA'S  
10 WHOLESALE LENDER knew or should have known that Plaintiff could not qualify for or afford  
11 by, for example, the underwriter has approved this loan based upon credit scores and the borrower's  
12 Stated Income only. Had AMERICA'S WHOLESALE LENDER used a more accurate and  
13 appropriate factor, such as Tax Forms and a more determinative level of scrutiny of determining the  
14 debt to income ratio, Plaintiff would not have qualified for the loan in the first place. Consequently,  
15 AMERICA'S WHOLESALE LENDER sold Plaintiff a loan product that it knew or should have  
16 known would never be able to be fully paid back by Plaintiff. AMERICA'S WHOLESALE  
17 LENDER ignored long-standing economic principals of underwriting and instead, knowingly,  
18 liberally, greedily and without any regard for Plaintiff's rights sold Plaintiff a deceptive loan product.  
19  
20

21       26. There was no determination of the ability of the borrower to repay the loan, with  
22 complete disregard for the Guidance Letters issued by Federal Agencies and even Federal and State  
23 Law.  
24

25       27. Defendants, and each of them, neither explained the workings of the entire mortgage  
26 loan transaction, how the rates, finance charges, costs and fees were computed, nor the inherent  
27 volatility of the loan product(s) provided by Defendants.  
28



1 28. The Defendant's utilized excessive closing costs/fees that are actionable for treble  
2 damages pursuant to 12 U.S.C. §2607. Those fees include, but are not limited to: The mortgage  
3 broker's was loan origination fee and a Yield Spread Premium by AMERICA'S WHOLESALE  
4 LENDER plus processing fees. AMERICA'S WHOLESALE LENDER paid UNKNOWN  
5 MORTGAGE BROKER premiums for increased yields in rates. In the case of an adjustable loan the  
6 lenders higher yield is in the margin. The higher the margin for the borrower the higher the premium  
7 to the broker.  
8

9 29. The purpose of entering into the above-described mortgage loan transactions was for  
10 Plaintiff to eventually own the Subject Property. That purpose was knowingly and intentionally  
11 thwarted and indeed made impossible by Defendants' actions alleged herein.  
12

13 30. Plaintiff is informed and believes the following legal violations were incurred during the  
14 handling and processing of Plaintiff's loan:  
15

16 31. Plaintiff is informed and believes and therefore alleges that the underwriter approved  
17 this loan based only upon a stated income and a medium to high risk credit score and a belief that the  
18 property would continue to increase in value and that the Plaintiff should have been declined for this  
19 loan.  
20

21 32. Plaintiff is informed and believes and therefore alleges that based on a Real Income  
22 Analysis, with the type of take home income Plaintiff possess and that was clearly disclosed to  
23 Defendants, that the borrower would not be able to support the home payment over an extended  
24 period.  
25

26 33. Plaintiff is informed and believes and therefore alleges that Defendants failed to  
27 provide Plaintiff with written notice of the furnishing of negative credit information to consumer  
28 reporting agency after Defendants furnished such negative credit information about Plaintiff.

1 34. Plaintiff is informed and believes and therefore alleges that Defendants breached their  
2 fiduciary duty to Plaintiff because they knew or should have known that the Plaintiff will or had a  
3 strong likelihood of defaulting on this loan, they have a fiduciary duty to the borrower to not place  
4 them in that loan (in harms way).  
5

6 35. Plaintiff is informed and believes and therefore alleges that it was in the best interest  
7 of the Defendants to promote the particular program for which they approved the Plaintiff. It led to a  
8 maximization of profits for the Defendants, with no concern for the Plaintiff financial position or  
9 livelihood.  
10

11 36. Plaintiff is informed and believes and therefore alleges that as a result of the practices  
12 of Defendants, and each of them throughout the handling of this loan, that such practices are  
13 consistent with the definition of predatory lending, and encompass numerous characteristics that  
14 indicate such.  
15

16 37. Plaintiff is informed and believes and therefore alleges that Defendants provided  
17 inadequate disclosure of the true costs, risks and, where necessary, appropriateness to the borrower  
18 of loan transactions in violation of the Federal Trade Commission Act.  
19

20 38. Plaintiff is informed and believes and therefore alleges that Defendants engaged in  
21 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading  
22 advertising in violation, rising to unfair and deceptive business practices, in violation of California  
23 Business and Professions Code § 17200 and the Unfair and Deceptive Acts and Practices statutes.  
24

### **FIRST CAUSE OF ACTION**

#### **Declaratory Relief**

#### **(Against All Defendants)**

27 39. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
28

1 fully set forth herein.

2 40. An actual controversy has arisen and now exists between Plaintiff and Defendants  
3 regarding their respective rights and duties, in that Plaintiff contends that Defendants did not have  
4 the right to foreclose on the Subject Property because Defendants' security interest in the Subject  
5 Property has been rendered void by operation of law, pursuant to 24 Code of Federal Regulations  
6 3500.10, the California Civil Code, California Business and Professions Code, UDAP, TILA and  
7 RESPA. Thus the purported power of sale by Defendants no longer applies. Plaintiff further  
8 contends that Defendants do not have the right to foreclose on the Subject Property because  
9 Defendants did not properly comply with proper delivery procedures under RESPA. Plaintiff further  
10 contends that the Defendants perpetrated a fraudulent loan transaction.  
11

12 41. Plaintiff requests that this Court find the purported power of sale contained in the  
13 Loan of no force and effect at this time, because Defendants actions in the processing, handling and  
14 attempted foreclosure of this loan has contained numerous violations of State and Federal laws  
15 designed to protect borrowers, which has directly caused Plaintiff to be at an equitable disadvantage  
16 to Defendants. Plaintiff further requests that title to the Subject Property remain in Plaintiff's name,  
17 with said Deed of Trust remaining in beneficiaries' name, during the pendency of this litigation  
18

19 42. As a result of the Defendants' actions, Plaintiff has suffered damages according to  
20 proof, and seeks declaratory relief that Defendants' purported power of sale is void and has no force  
21 or effect against the Subject Property.  
22

23 43. Further, Defendants' actions have been willful, knowing and malicious.  
24

25 WHEREFORE, Plaintiff prays for relief as set forth below.

26 **SECOND CAUSE OF ACTION**

27 **Injunctive Relief**  
28

**(Against All Defendants)**

44. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

45. Defendants have commenced a foreclosure action under the Note and have scheduled a non-judicial sale. Said sale will cause Plaintiff great and irreparable injury in that real property is unique.

46. The wrongful conduct of Defendants, unless restrained and enjoined by an order of the court, will cause great and irreparable harm to Plaintiff. Plaintiff will not have the beneficial use and enjoyment of the property and will lose their home

47. Plaintiff has no other plain, speedy or adequate remedy and the injunctive relief prayed for below is necessary and appropriate at this time to prevent irreparable loss to Plaintiff. Plaintiff has suffered and will continue to suffer in the future unless Defendants' wrongful conduct is restrained and enjoined because real property is inherently unique and it is and will be impossible for Plaintiff to determine the precise amount of damage Plaintiff will suffer.

WHEREFORE, Plaintiff prays for relief as set forth below.

**THIRD CAUSE OF ACTION**

**Determine Nature, Extend and Validity of Lien under**

**California Commercial Code §9313**

**(Against All Defendants)**

48. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

51. Defendants failed to comply with California Commercial Code §9313.

53. Said unperfected security interest of defendant is void as to plaintiff by virtue of 11 U.S.C. §544.

#### FOURTH CAUSE OF ACTION

**(Against All Defendants)**

54. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

1           55. Every contract imposes upon each party a duty of good faith and fair dealing in its  
2 performance and its enforcement. This implied covenant of good faith and fair dealing requires that  
3 no party will do anything that will have the effect of impairing, destroying, or injuring the rights of  
4 the other party to receive the benefits of their agreement. The covenant implies that in all contracts  
5 each party will do all things reasonably contemplated by the terms of the contract to accomplish its  
6 purpose. This covenant protects the benefits of the contract that the parties reasonably contemplated  
7 when they entered into the agreement.  
8

9           56. The terms of the Loan imposed upon Defendants a duty of good faith and fair dealing in  
10 this matter.  
11

12           57. Defendants enjoyed substantial discretionary power affecting the rights of Plaintiff during  
13 the events alleged in this Complaint. Defendants were required to exercise such power in good faith.  
14

15           58. Defendants willfully breached their implied covenant of good faith and fair dealing with  
16 Plaintiff when Defendants:  
17

- 18           I. Willfully withheld numerous disclosures;
- 19           II. Willfully withheld notices in regard to excessive fees and finance charges  
20 including Yield Spread Premiums, Underwriting standards, Good Faith  
21 Estimates, Disclosures of additional income due to interest rate increases, and  
22 failure to disclose when negative credit scores were disseminated;
- 23           III. Willfully placed Plaintiff in a loan that he did not qualify for, could not afford,  
24 and subjected him to further financial detriment, while providing Defendants  
25 with financial benefits they would not have otherwise enjoyed.

26           59. As a result of Defendants' breach of this covenant, Plaintiff has suffered injury and has  
27  
28

1 caused Plaintiff the threat of loss of their home. Plaintiff has incurred and continues to incur legal  
2 fees, including attorney fees and costs, as well as expenses to right this wrong.

3 60. Defendants' actions in this matter have been willful, knowing, malicious, fraudulent and  
4 oppressive, entitling Plaintiff to punitive damages in an amount appropriate to punish Defendants  
5 and to deter others from engaging in the same behavior.  
6

7 WHEREFORE, Plaintiff prays for relief as set forth below.

8 **FIFTH CAUSE OF ACTION**

9 **Violation of TILA, 15 U.S.C. § 1601, et.seq.**

10 **(Against All Defendants)**

11 61. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
12 fully set forth herein.  
13

14 62. The Truth In Lending Act (TILA) applies because the transaction involves the  
15 extension of credit to a consumer for personal, family or household purposes that is subject to a  
16 finance charge and/or payable by written agreement in more than four installments per 15 U.S.C. §§  
17 1601-1666j.  
18

19 63. Defendants violated TILA by failing to provide Plaintiff with accurate material  
20 disclosures required under TILA and not taking into account the intent of the State Legislature in  
21 approving this statute which was to fully inform home buyers of the pros and cons of adjustable rate  
22 mortgages in a language (both written and spoken) that they can understand and comprehend; and  
23 advise them to compare similar loan products with other lenders. It also requires the lender to offer  
24 other loan products that might be more advantageous for the borrower under the same qualifying  
25 matrix.  
26  
27  
28

1           64. Plaintiff could not nor would not be able to afford this loan. The risks versus the  
2 Debt to Income Ratio were not specifically and clearly disclosed to Plaintiff.

3           65. AMERICA'S WHOLESALE LENDER failed to provide Plaintiffs with a correct  
4 payment schedule, a properly disclosed interest rate, an accurate Good Faith Estimate or a disclosure  
5 relating to Property/Hazard Insurance, all required under the Code of Federal Regulations.  
6

7           66. Any and all statute[s] of limitations relating to disclosures and notices required  
8 pursuant to 15 U.S.C. § 1601, et.seq. were tolled due to Defendants' failure to effectively provide the  
9 required disclosures and notices.

10           67. Per 12 CFR § 226.19(b), AMERICA'S WHOLESALE LENDER was required to  
11 provide the Plaintiffs with the "Consumer Handbook on Adjustable Rate Mortgages" (CHARM)  
12 booklet. No such booklet was received which is a violation of the TILA laws.  
13

14           68. AMERICA'S WHOLESALE LENDER was further required to fully disclose the  
15 terms of the financing to the Plaintiff and again, there is no evidence to support such disclosure was  
16 provided to the Plaintiff. In this case, with such a volatile loan, the Plaintiff should have been fully  
17 counseled on the terms and the how such affected the property.  
18

19           69. An actual controversy now exists between Plaintiff, who contends they have the right  
20 to rescind the loan on the Subject Property alleged in this Complaint, and based on information and  
21 belief, Defendants deny that right.  
22

23           70. As a direct and proximate result of Defendants' violations Plaintiff has incurred and  
24 continues to incur damages in an amount according to proof but not yet ascertained including  
25 without limitation, statutory damages and all amounts paid or to be paid in connection with the  
26 transaction.  
27

28           71. Defendants were unjustly enriched at the expense of Plaintiff who is therefore entitled to



1 equitable restitution and disgorgement of profits obtained by Defendants.

2 72. Defendants' actions in this matter have been willful, knowing, malicious, fraudulent and  
3 oppressive, entitling Plaintiff to punitive damages in an amount appropriate to punish Defendants  
4 and to deter others from engaging in the same behavior.  
5

6 WHEREFORE, Plaintiff prays for relief as set forth below.

7 **SIXTH CAUSE OF ACTION**

8 **Violation of Real Estate Settlement and Procedures Act (RESPA)**

9 **(Against All Defendants)**

10 73. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
11 fully set forth herein.  
12

13 74. RESPA applies because a lender that regularly extends federally related mortgage loans  
14 aggregating more than \$1 million per year, and intended for the purchase of a one- to four-family  
15 residential property are subject to RESPA per 12 U.S.C. §§ 2601-2617.  
16

17 75. Housing and Urban Development's (HUD's) 1999 Statement of Policy established a  
18 two-part test for determining the legality of lender payments to mortgage brokers for table funded  
19 transactions and intermediary transactions under RESPA:

20 (1) Whether goods or facilities were actually furnished or services were actually performed  
21 for the compensation paid and;

22 (2) Whether the payments are reasonably related to the value of the goods or facilities that  
23 were actually furnished or services that were actually performed.  
24

25 In applying this test, HUD believes that total compensation should be scrutinized to assure  
26 that it is reasonably related to the goods, facilities, or services furnished or performed to determine  
27 whether it is legal under RESPA.  
28

1           76. To earn a Yield Spread Premium (YSP), the broker will increase the amount of the  
2 margin that the borrower will pay, which increases the interest rate and the monthly payment. The  
3 increase in the monthly payment multiplied over three years will be the Yield Spread Premium. It  
4 takes the borrower three years to repay the Yield Spread Premium. Once the three-year repayment  
5 period has ended, the margin on the interest rate does not drop. Instead, the borrower continues to  
6 pay at the same interest rate and the lender reaps the benefits of the higher payment.  
7

8           77. This was purported to Plaintiff by explaining that the Yield Spread Premium was a  
9 “credit for closing costs” or other sort of bait and switch tactic. The Yield Spread Premium  
10 significantly affects the borrower’s payment and financial situation. By allowing UNKNOWN  
11 MORTGAGE BROKER to earn Yield Spread Premium, AMERICA’S WHOLESALE LENDER  
12 would earn excessive fees, to be proven, over the life of the loan, if carried to maturity, as a result of  
13 the higher interest rate. Both AMERICA’S WHOLESALE LENDER and UNKNOWN  
14 MORTGAGE BROKER have enjoyed the benefits of Unjust Enrichment.  
15

16           78. The Yield Spread Premium was not explained to the Plaintiff that they would be  
17 paying this through their loan payments. AMERICA’S WHOLESALE LENDER and UNKNOWN  
18 MORTGAGE BROKER also failed to provide a separate fee agreement regarding Yield Spread  
19 Premium, properly disclosing this fact.  
20

21           79. No separate fee agreements, regarding Yield Spread Premium that the broker and the  
22 lender have enjoyed were ever provided, resulting in the benefits of Unjust Enrichment for  
23 AMERICA’S WHOLESALE LENDER and UNKNOWN MORTGAGE BROKER.  
24

25           80. Defendants violated RESPA because the payments to the mortgage broker and to the  
26 lender were misleading and designed to create a windfall. These actions were deceptive, fraudulent  
27 and self serving.  
28

1 81. As a proximate result of Defendants' actions, Plaintiff has been damages in an amount  
2 not yet ascertained, to be proven at trial.

3 WHEREFORE, Plaintiff prays for relief as set forth below.  
4

5 **SEVENTH CAUSE OF ACTION**

6 **Violation of California Civil Code § 2932.5**

7 **(Against All Defendants)**

8 82. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
9 fully set forth herein.

10 83. Where a power to sell real property is given to a mortgagee, or other entity whom has  
11 placed an encumbrance on title, in an instrument intended to secure the payment of money, the  
12 power is part of the security and vests in any person who by assignment becomes entitled to payment  
13 of the money secured by the instrument. The power of sale may be exercised by the assignee if the  
14 assignment is duly acknowledged and recorded.  
15

16 84. Mortgage Electronic Registration System (MERS) has been named the beneficiary for  
17 this loan. MERS was created to eliminate the need for the executing and recording of assignment of  
18 mortgages, with the idea that MERS would be the mortgagee of record. This would allow MERS to  
19 foreclose on the property, and at the same time, assist AMERICA'S WHOLESALE LENDER in  
20 avoiding the recording of the Assignments of Beneficiary on loans sold. This saved AMERICA'S  
21 WHOLESALE LENDER money in manpower and the costs of recording these notes. It was also  
22 designed to "shield" investors from liability as a result of lender misconduct regarding the process of  
23 mortgage lending.  
24

25 85. MERS is simply an "artificial" entity designed to circumvent certain laws and other  
26 legal requirements dealing with mortgage loans. By designating certain member employees to be  
27  
28

1 MERS corporate officers, MERS has created a situation whereby the foreclosing agency and MERS  
2 “designated officer” has a conflict of interest.

3 86. Since neither MERS nor the servicer have a beneficial interest in the note, nor do they  
4 receive the income from the payments, and since it is actually an employee of the servicer signing the  
5 Assignment in the name of MERS, the Assignment executed by the MERS employee is illegal. The  
6 actual owner of the note has not executed the Assignment to the new party. An assignment of a  
7 mortgage in the absences of the assignment and physical delivery of the note will result in a nullity.  
8

9 87. It must also be noted that the lender or other holder of the note registers the loan on  
10 MERS. Thereafter, all sales or assignments of the mortgage loan are accomplished electronically  
11 under the MERS system. MERS never acquires actual physical possession of the mortgage note, nor  
12 do they acquire any beneficial interest in the Note.  
13

14 88. The existence of MERS indicated numerous violations of the California Business and  
15 Professions Code as well as Unfair and Deceptive Acts and Practices due to the conflicting nature  
16 and identity of the servicer and the beneficiary. Each of these practices were intentionally designed  
17 to mislead the borrower and benefit the lenders. One can only conclude after a reading of this  
18 section, that MERS has no legal standing to foreclose.  
19

20 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set  
21 forth herein.

22 **EIGHTH CAUSE OF ACTION**

23 **Rescission**

24 **(Against All Defendants)**

25 89. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
26 fully set forth herein.  
27  
28

1 90. Plaintiff is entitled to rescind the loan for all of the foregoing reasons: 1) TILA  
2 Violations; 2) RESPA; 3) Fraudulent Concealment; and 4) Public Policy Grounds, each of which  
3 provides independent grounds for relief.  
4

5 91. The Truth In Lending Act, 15 U.S.C §1601, et.seq. extends Plaintiff's right to rescind  
6 a loan to three years from the date of closing if the borrower received false or incomplete disclosures  
7 of either the loans terms or Borrower's right to rescind. Here, Defendants have failed to properly  
8 disclose the details of the loan. Specifically, the initial disclosures do not initial TIL disclosures, and  
9 lack of diligence and collusion on the part of the broker, lender and underwriter to place Plaintiff in a  
10 loan they could not afford and would ultimately benefit Defendants.  
11

12 92. The public interest would be prejudiced by permitting the alleged contract to stand;  
13 Such action would regard an unscrupulous lender.  
14

15 93. As a proximate result of Defendants' actions, Plaintiff has been damaged in an  
16 amount not yet ascertained, to be proven at trial.  
17

18 WHEREFORE, Plaintiff prays for rescission of the stated loan in its entirety.

19 **NINTH CAUSE OF ACTION**

20 **Fraud - California Civil Code §1572**

21 **(Against All Defendants)**

22 94. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
23 fully set forth herein.

24 95. Defendants intentionally, willfully and wantonly engaged in the acts with the  
25 purpose of deceiving Plaintiff and inducing them to part with their personal and real property buy  
26 using a stated income loan.  
27  
28

97. Defendants engaged in the unlawful suppression of facts or circumstances by one of the parties to a contract from the other, for self-serving purposes and financial gain, which in justice ought to be made known.

9            98. This loans was fraudulent because: a) the current loan program creates a belief in Plaintiff  
10      that they will be able to make the payments and is illusory and never really in effect; b) the use of a  
11      stated income, without verification and the use of an automatic underwriter fails to reach an  
12      appropriate standard while simultaneously inducing Plaintiff's reliance on the qualification process;  
13      and c) underwriting a borrower based on the clear and present risk is "knowingly" selling a mortgage  
14      loan that will fail.  
15

16 99. Plaintiff justifiably relied on Defendant's deception, which was the actual and  
17 proximate cause of Plaintiff's damages.

19           100. Plaintiff is entitled to exemplary and punitive damages for Defendants' fraudulent  
20 conduct in the sum to be determined at trial. Further, fraudulent concealment avoids the contract.

21 WHEREFORE, Plaintiff prays for relief as set forth below.

## Unfair And Deceptive Business Act Practices (UDAP)

**(Against All Defendants)**

101. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
fully set forth herein.

104. By reason of the foregoing, Plaintiff has suffered and continues to suffer damages in a sum which is, as yet unascertained.

105. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

106. Defendants owed a fiduciary duty to Plaintiff and breached that duty by ailing to advise or notify Plaintiff when Defendant's broker knew or should have known that Plaintiff will or

1 has a likelihood of defaulting on the loan, Defendants have a fiduciary duty to the borrower to not  
2 place them in that loan (in harms way).

3 107. Regarding this loan, it was in the best interest of the Defendants to promote the  
4 particular program for which they approved the Plaintiff. It led to a maximization of profits for the  
5 Defendants, with no concern for the borrower. A 30-year fixed with less principal or an outright  
6 denial of the current loan program would have netted less return for the lender, though better for the  
7 borrower.  
8

9 108. Defendant failed to provide material disclosures regarding the loan and its interest  
10 rate to Plaintiff while in the capacity of Plaintiff's Lender.  
11

12 109. Defendants failed to fully comply with TILA regulations and laws designated to  
13 protect Plaintiff. The failure to do so placed Plaintiff in a serious disadvantage and potential loss of  
14 their home. Such actions are violations of a fiduciary responsibility owed to Plaintiff by Defendants.  
15

16 WHEREFORE, Plaintiff prays for relief as set forth below.

17 **TWELFTH CAUSE OF ACTION**

18 **Unconscionability – UCC-2-3202**

19 **(Against All Defendants)**

20 110. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
21 fully set forth herein.  
22

23 111. If the court as a matter of law finds the contract or any clause of the contract to have  
24 been unconscionable at the time it was made the court may refuse to enforce the contract, or it may  
25 enforce the remainder of the contract without the unconscionable clause, or it may so limit the  
26 application of any unconscionable clause as to avoid any unconscionable result.  
27  
28



1           112. When it is claimed or appears to the court that the contract or any clause thereof may  
2  
3 be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its  
4 commercial setting, purpose and effect to aid the court in making the determination.

5           113. Here, based on the deception, unfair bargaining position, lack of adherence to the  
6 regulations, civil codes and federal standards that the Defendants were require to follow; coupled  
7 with the windfall that the Defendants reaped financially from their predatory practices upon  
8 Plaintiff's, the court may find that the loan agreement and trust deed are unconscionable and of no  
9 force or effect.  
10

11           WHEREFORE, Plaintiff prays for restitution and relief as set forth below.

12                           **THIRTEENTH CAUSE OF ACTION**

13                           **Predatory Lending; California Business and Professions Code §17200**

14                           **(Against All Defendants)**

15  
16           114. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
17 fully set forth herein.

18  
19           115. The Office of Comptroller of the Currency defines Predatory Lending as any lien  
20 secured by real estate which shares well known common characteristics that result in Unfair and  
21 Deceptive Business Practices under California Business and Professions Code § 17200.

22           116. Acts undertaken by the Defendants here that are consistent with the Office of the  
23 Comptroller's definition include the fact that this loan was marketed in a way which fails to fully  
24 disclose all material terms and includes terms and provisions which are unfair, fraudulent or  
25 unconscionable;  
26  
27  
28

118. The loan does not does not plainly and prominently disclose on the good faith estimate of closing costs the size of any yield spread premium paid directly or indirectly, in whole or in part, to a mortgage loan officer;

8            119. Contains loan terms whereby the borrower can never realistically repay the loan,  
9            representative of "Bait and Switch" tactics.

120. This loan is based on a loan application that is inappropriate for the borrowers. For instance, the use of a No Income stated on the loan application from an employed individual who has or can obtain pay stubs, W-2 forms and tax returns.

121. This loan is underwritten without due diligence by the party originating the loan. There has been no realistic means test for determining the ability of the borrowers to repay the loan. Further, there is a lack of documentation of income or assets and/or job verification.

WHEREFORE, Plaintiff prays for relief as set forth below.

## Quiet Title

**(All Defendants Claiming Any Interest In the Subject Property)**

122. Plaintiff re-alleges and incorporate by reference all preceding paragraphs as though  
4 fully set forth herein.

123. Plaintiff is at all times herein mentioned the owner and/or entitled to possession of

1 the Property, until the date of sale that transferred physical possession of the deed of trust to the non-  
2 bonafide subsequent purchaser.

3 124. Plaintiff was informed and therefore believes and thereupon alleges that Defendants,  
4 and each of them, claim an interest in the Subject Property adverse to Plaintiffs. However, as a result  
5 of the conduct more fully described in the preceding allegations, the claim of Defendants is without  
6 any right whatsoever, and said Defendants have no legal or equitable right, claim, or interest in the  
7 Property.  
8

9 125. Plaintiff therefore seek a declaration that the title to the Subject Property is vested in  
10 Plaintiff's alone and that the Defendants herein, and each of them, be declared to have no estate,  
11 right, title or interest in the Subject Property and that said Defendants, and each of them, be forever  
12 enjoined from asserting any estate, right, title or interest in the Subject Property adverse to Plaintiff.  
13

14 WHEREFORE, Plaintiff prays for relief as set forth below.  
15

16 **PRAYER FOR RELIEF**

17 WHEREFORE Plaintiff will ask for the following for each Cause of Action sustained:

- 18 1. For Compensatory Damages in an amount to be determined by proof at trial.
- 19 2. For Special Damages in an amount to be determined by proof at trial.
- 20 3. For General Damages in an amount to be determined by proof at trial.
- 21 4. For Treble Damages in an amount to be determined by proof at trial.
- 22 5. For Punitive Damages as against the individual Defendants.
- 23 6. For Attorney's Fees and Costs of this action.
- 24 7. For Declaratory Relief, including a declaration that Plaintiff is the prevailing party.
- 25 8. For an Injunction, enjoining any foreclosure proceeding on the Subject Property.
- 26 9. For a judgment rescinding the Loan and Security Agreement and setting forth terms  
27 of restitution.  
28

1 10. For a judgment ordering that the Defendants provide proof of authority to foreclose  
2 by producing the promissory note.

3 11. Quiet Title.

4 12. For any prejudgment or other interest according to law.

5 13. Any other and further relief that the Court considers just and proper.

6  
7 Dated: 10-27-10

  
MELANIE ESPIRITU, In Pro Per

8  
9 Dated: 10-27-10

  
JESUS ESPIRITU, In Pro Per

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JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the local docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

MELANIE ESPIRITU and JESUS ESPIRITU, wife and husband  
as joint tenants,

(b) County of Residence of First Listed Plaintiff SAN DIEGO  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
MELANIE ESPIRITU and JESUS ESPIRITU, In Pro Per  
987 Saint Germain Road, Chula Vista, CA 91913  
Tel: (619) 271-9413 Fax: (888) 755-1416

**DEFENDANTS**

AMERICA'S WHOLESALE LENDER; FINANCIAL TITLE COMPANY;  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC.

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

10 CV 2277

JLS BGS

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |                                       |                            |   |                            |                            |
|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| PTF                                   | DEF                        |   | PTF                        | DEF                        |
| <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Citizen of This State   | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Citizen of Another State                                      | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Citizen or Subject of a Foreign Country                       | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
|                                       |                            | Incorporated or Principal Place of Business In This State     |                            |                            |
|                                       |                            | Incorporated and Principal Place of Business In Another State |                            |                            |
|                                       |                            | Foreign Nation  |                            |                            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input checked="" type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: 28 USC 1331

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10-27-10

M. Espiritu / Jesus Espiritu

FOR OFFICE USE ONLY

RECEIPT #

19929

AMOUNT

\$350-

APPLYING IFP

JUDGE

MAG. JUDGE

AB 11-04-10

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS019929  
Cashier ID: mbain  
Transaction Date: 11/04/2010  
Payer Name: ESPIRITU V AMERICAS WHOLESALE

-----  
CIVIL FILING FEE

For: ESPIRITU V AMERICAS WHOLESALE  
Case/Party: D-CAS-3-10-CV-002277-001  
Amount: \$350.00

-----  
CASH

Amt Tendered: \$350.00

-----  
Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.